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8 Attorneys for Plaintiff

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) No.07-0454 PJH
15 Plaintiff)
16 v.)
17 SHANNON BLAYLOCK and)
TAWAKONI SEATON)
18 Defendants)
19 _____)

Pre-Trial Conference: August 27, 2008
Time: 1:30 p.m.
Trial Date: September 15, 2008
Time: 8:30 a.m.

**JOINT PROPOSED JURY
INSTRUCTIONS**

1 Pursuant to the June 28, 2008 Order of Pretrial Preparation For Criminal Jury Trial (*ECF*
2 *Docket No. 77*), the parties hereby submit the following Proposed Jury Instructions on case
3 specific issues of law.

4 The parties reserve the right to request such additional instructions as may become
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9

10 necessary from rulings on motions in limine, presentation of the evidence at trial, or upon
11 determination of the theory of the defense.

12
13 Date: August 13, 2008

Respectfully submitted,

14 JOSEPH P. RUSSONIELLO
15 United States Attorney

16 /s/
17 DENISE MARIE BARTON
18 Assistant United States Attorney

19 SHANNON BLAYLOCK
20 Defendant

21 /s/
22 Michael Stepanian
23 Attorney for Defendant Shannon Blaylock

In addition to the Model Jury Instructions to be given by the Court, as set forth in the June 28, 2008 Order of Pretrial Preparation For Criminal Jury Trial (*ECF Docket No. 77*), the parties request that the Court give the following Model Criminal Jury Instructions for the Ninth Circuit. The parties recognize that certain of these requested instructions will only be necessary upon admission of certain evidence and reserve the right to modify these proposed instructions.

- 2.10 Other Crimes, Wrongs or Acts Evidence
- 2.11 Defendant's Photographs, "Mug Shots"
- 2.13 Disposition of a Charge Against a Co-Defendant
- 3.10 Evidence of Other Acts of Defendant or Acts and Statements of Others
- 3.11 Activities Not Charged
- 3.12 Separate Consideration of Multiple Counts
- 4.1 Statements By The Defendant
- 4.3 Other Crimes, Wrongs or Acts of Defendant
- 4.6 Impeachment, Prior Conviction of Defendant
- 4.8 Impeachment Evidence—Witness
- 4.9 Testimony of Witnesses Involving Special Circumstances, Immunity, Benefits, Accomplice, and Plea
- 4.14 Eyewitness Identification
- 4.18 Summaries Not Received in Evidence
- 4.19 Charts and Summaries in Evidence
- 5.6 Knowingly—Defined

The parties further request that the Court give the following instructions on substantive issues of law:

1 **CONSPIRACY—ELEMENTS**

2 (MODEL INSTRUCTION 8.16)

3 JOINT PROPOSAL

4

5 The defendant is charged in Count One of the indictment with conspiring to engage in sex
6 trafficking in violation of Section 1591 of Title 18 of the United States Code. In order for each
7 defendant to be found guilty of that charge, the government must prove each of the following
8 elements beyond a reasonable doubt:

9

10 First, beginning in or about February 2007, and ending on or about March 22, 2007, there
11 was an agreement between two or more persons to commit at least one crime as charged in Count
12 One of the indictment; and

13

14 Second, the defendant became a member of the conspiracy knowing of at least one of its
15 objects and intending to help accomplish it; and

16

17 Third, one of the members of the conspiracy performed at least one overt act for the
18 purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you
19 find was committed.

20

21 I shall discuss with you briefly the law relating to each of these elements.

22

23 A conspiracy is a kind of criminal partnership—an agreement of two or more persons to
24 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;
25 it does not matter whether the crime agreed upon was committed.

1
2 For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement
3 or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply
4 met, discussed matters of common interest, acted in similar ways, or perhaps helped one another.
5 You must find that there was a plan to commit at least one of the crimes alleged in the indictment
6 as an object of the conspiracy with all of you agreeing as to the particular crime which the
7 conspirators agreed to commit.

8
9 One becomes a member of a conspiracy by willfully participating in the unlawful plan
10 with the intent to advance or further some object or purpose of the conspiracy, even though the
11 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
12 willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,
13 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
14 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
15 does not become a conspirator merely by associating with one or more persons who are
16 conspirators, nor merely by knowing that a conspiracy exists.

17
18 An overt act does not itself have to be unlawful. A lawful act may be an element of a
19 conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
20 required to prove that the defendant personally did one of the overt acts.

21
22 **Authority:**

23 Manual of Model Criminal Jury Instructions For the District Courts of the Ninth Circuit,
Instruction 8.16.

1 **CONSPIRACY—ELEMENTS**

2 (MODEL INSTRUCTION 8.16)

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4 The defendant is charged in Count One of the indictment with conspiring to engage in sex
5 trafficking in violation of Section 1591 of Title 18 of the United States Code. In order for each
6 defendant to be found guilty of that charge, the government must prove each of the following
7 elements beyond a reasonable doubt:

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9 First, beginning in or about February 2007, and ending on or about March 22, 2007, there
10 was an agreement between two or more persons to commit at least one crime as charged in Count
11 One of the indictment; and

12

13 Second, the defendant became a member of the conspiracy knowing of at least one of its
14 objects and intending to help accomplish it; and

15

16 Third, one of the members of the conspiracy performed at least one overt act for the
17 purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you
18 find was committed.

19

20 I shall discuss with you briefly the law relating to each of these elements.

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23 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;
24 it does not matter whether the crime agreed upon was committed.

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26 For a conspiracy to have existed, it is not necessary that the conspirators made a formal
27 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that
they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped

1
2 one another. You must find that there was a plan to commit at least one of the crimes alleged in
3 the indictment as an object of the conspiracy with all of you agreeing as to the particular crime
4 which the conspirators agreed to commit.

5
6 One becomes a member of a conspiracy by willfully participating in the unlawful plan
7 with the intent to advance or further some object or purpose of the conspiracy, even though the
8 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
9 willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand,
10 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some
11 object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person
12 does not become a conspirator merely by associating with one or more persons who are
13 conspirators, nor merely by knowing that a conspiracy exists.

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15 An overt act does not itself have to be unlawful. A lawful act may be an element of a
16 conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not
17 required to prove that the defendant personally did one of the overt acts.

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**CONSPIRACY—LIABILITY FOR SUBSTANTIVE OFFENSE
COMMITTED BY CO-CONSPIRATOR (*PINKERTON* CHARGE)**

(MODEL INSTRUCTION 8.20)

JOINT PROPOSAL

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find the defendant guilty of Sex Trafficking of a Minor as charged in Count Two of the indictment if the government has proved each of the following elements beyond a reasonable doubt:

1. a person named in Count Two of the indictment committed the crime of Sex Trafficking of a Minor as alleged in that count;
 2. the person was a member of the conspiracy charged in Count One of the indictment;
 3. the person committed the crime of Sex Trafficking of a Minor in furtherance of the conspiracy;
 4. the defendant was a member of the same conspiracy at the time the offense charged in Count Two was committed; and
 5. the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

Authority: Manual of Model Criminal Jury Instructions For the District Courts of the Ninth Circuit, Instruction 8.16.

1 **CONSPIRACY—LIABILITY FOR SUBSTANTIVE OFFENSE**
2 **COMMITTED BY CO-CONSPIRATOR (*PINKERTON* CHARGE)**
3 **(MODEL INSTRUCTION 8.20)**

4
5 Each member of the conspiracy is responsible for the actions of the other conspirators
6 performed during the course and in furtherance of the conspiracy. If one member of a conspiracy
7 commits a crime in furtherance of a conspiracy, the other members have also, under the law,
8 committed that crime.

9
10 Therefore, you may find the defendant guilty of Sex Trafficking of a Minor as charged in
11 Count Two of the indictment if the government has proved each of the following elements beyond
12 a reasonable doubt:

- 13
- 14 1. a person named in Count Two of the indictment committed the crime of Sex
15 Trafficking of a Minor as alleged in that count;
16 2. the person was a member of the conspiracy charged in Count One of the indictment;
17 3. the person committed the crime of Sex Trafficking of a Minor in furtherance of the
18 conspiracy;
19 4. the defendant was a member of the same conspiracy at the time the offense charged in
20 Count Two was committed; and
21 5. the offense fell within the scope of the unlawful agreement and could reasonably have
22 been foreseen to be a necessary or natural consequence of the unlawful agreement.

1
2 **SEX TRAFFICKING OF A MINOR – FIRST ELEMENT**

3 JOINT PROPOSAL

4
5 The first element of the crime of sex trafficking of a minor requires that the defendant
6 knowingly recruited, enticed, harbored, transported, provided, or obtained a person whom the
7 defendant knew would be caused to engage in a commercial sex act or that the defendant
8 knowingly did benefit, financially or by receiving anything of value, from participation in a
9 venture that recruited, enticed, harbored, transported, provided, or obtained a person whom the
10 defendant knew would be caused to engage in a commercial sex act.

11
12 To satisfy this element, the government must prove either that the defendant knew that
13 the person recruited, enticed, harbored, transported, provided or obtained would be caused to
14 engage in a commercial sex act or or that the defendant knowingly did benefit, financially or by
15 receiving anything of value, from participation in a venture that recruited, enticed, harbored,
16 transported, provided, or obtained a person whom the defendant knew would be caused to engage
17 in a commercial sex act. Although you may find that the government proved both that the
18 defendant knew that the person recruited, enticed, harbored, transported, provided or obtained
19 would be caused to engage in a commercial sex act and that the defendant knowingly did benefit,
20 financially or by receiving anything of value, from participation in a venture that recruited,
21 enticed, harbored, transported, provided, or obtained a person, the government is not required to
22 prove both of these elements.

23
24 While it is not necessary for the defendant to be the one to cause the person to engage
25 in a commercial sex act, the government must prove beyond a reasonable doubt that the defendant
26 knew that the person would be caused to engage in such an act.

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2 In considering whether a defendant did any of these things, I instruct you to use the
3 ordinary, everyday definitions of these terms.

4
5 Recruit means to seek the services of or to enroll in support of oneself or others. To
6 entice means to attract or lure using hope or desire. To harbor a person means to give or afford
7 shelter or refuge to that person. To transport means to transfer or convey from one place to
8 another. Provide means to supply or make available. To obtain means to gain, acquire, or attain.
9 To benefit means to be helpful to or useful to.

10
11 The term “commercial sex act” means any sex act, on account of which anything of
12 value is given to or received by any person. It is not necessary that the United States prove that
13 the defendant, or even the victim gave or received the thing of value, but the government must
14 prove beyond a reasonable doubt that something of value was given or received to or by
15 somebody, on account of the sex act.

16
17 I instruct you that the word “value” is not limited to pecuniary gain. Money need not
18 be involved in order for you to find that value was given or received on account of the sex act.
19 However, you must find beyond a reasonable doubt that *something* of value was involved.

20
21 The term “venture” means any group of two or more individuals associated in fact,
22 whether or not a legal entity.

23
24 An act is done “knowingly” if the defendant is aware of the act and does not act or fail
25 to act through ignorance, mistake, or accident. The government is not required to prove that the
26 defendant knew that his or her acts or omissions were unlawful. You may consider evidence of

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2 the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether
3 the defendant acted knowingly.

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5 **Authorities:**

6 18 U.S.C. § 1591.

7 18 U.S.C. 1591(c)(1) [Commercial Sex Act - Defined].

8 18 U.S.C. § 1591(c)(3) [Venture - Defined].

9 Smith v. United States, 508 U.S. 233, 228 (1993) ("When a word is not defined by statute, we
normally construe it in accord with its ordinary or natural meaning").

10
11 United States v. Marmolejo, 89 F.3d 1185, 1191-1192 (5th Cir. 1996) (anything of value includes
intangibles, such as conjugal visits).

12 United States v. Williams, 705 F.2d 603, 623 (2d Cir. 1983) (construing "anything of value"
language broadly in context of bribery statute).

14 Ninth Circuit Model Jury Instructions (2003 edition reflecting changes through May
15 2007)(defining "knowingly").

16 Black's Law Dictionary (Second Edition 2001).

17 The American Heritage Dictionary of the English Language, New College Edition (1976).

SEX TRAFFICKING OF A MINOR – FIRST ELEMENT

The first element of the crime of sex trafficking of a minor requires that the defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a person whom the defendant knew would be caused to engage in a commercial sex act or that the defendant knowingly did benefit, financially or by receiving anything of value, from participation in a venture that recruited, enticed, harbored, transported, provided, or obtained a person whom the defendant knew would be caused to engage in a commercial sex act.

To satisfy this element, the government must prove either that the defendant knew that the person recruited, enticed, harbored, transported, provided or obtained would be caused to engage in a commercial sex act or or that the defendant knowingly did benefit, financially or by receiving anything of value, from participation in a venture that recruited, enticed, harbored, transported, provided, or obtained a person whom the defendant knew would be caused to engage in a commercial sex act. Although you may find that the government proved both that the defendant knew that the person recruited, enticed, harbored, transported, provided or obtained would be caused to engage in a commercial sex act and that the defendant knowingly did benefit, financially or by receiving anything of value, from participation in a venture that recruited, enticed, harbored, transported, provided, or obtained a person, the government is not required to prove both of these elements.

While it is not necessary for the defendant to be the one to cause the person to engage in a commercial sex act, the government must prove beyond a reasonable doubt that the defendant knew that the person would be caused to engage in such an act.

In considering whether a defendant did any of these things, I instruct you to use the ordinary, everyday definitions of these terms.

1
2 Recruit means to seek the services of or to enroll in support of oneself or others. To entice means
3 to attract or lure using hope or desire. To harbor a person means to give or afford shelter or refuge
4 to that person. To transport means to transfer or convey from one place to another. Provide
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9 value is given to or received by any person. It is not necessary that the United States prove that
10 the defendant, or even the victim gave or received the thing of value, but the government must
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12 somebody, on account of the sex act.

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14 I instruct you that the word “value” is not limited to pecuniary gain. Money need not
15 be involved in order for you to find that value was given or received on account of the sex act.
16 However, you must find beyond a reasonable doubt that *something* of value was involved.

17
18 The term “venture” means any group of two or more individuals associated in fact,
19 whether or not a legal entity.

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21 An act is done “knowingly” if the defendant is aware of the act and does not act or fail
22 to act through ignorance, mistake, or accident. The government is not required to prove that the
23 defendant knew that his or her acts or omissions were unlawful. You may consider evidence of
24 the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether
25 the defendant acted knowingly.

1 **SEX TRAFFICKING OF A MINOR – SECOND ELEMENT**

2 JOINT PROPOSAL

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4 The second element of sex trafficking of a child requires the government to prove

5 beyond a reasonable doubt that the defendant knew that the person was under 18 years of age at

6 the time she was caused to engage in a commercial sex act.

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10 **Authorities:**

11 *Definitions*

12 18 U.S.C. § 1591 (defining minor).

1 **SEX TRAFFICKING OF A MINOR – SECOND ELEMENT**
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The second element of sex trafficking of a child requires the government to prove beyond a reasonable doubt that the defendant knew that the person was under 18 years of age at the time she was caused to engage in a commercial sex act.

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2 **SEX TRAFFICKING OF A MINOR – THIRD ELEMENT**

3 JOINT PROPOSAL

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5 To satisfy the third and final element of the crime of sex trafficking of a child, the
6 government must prove beyond a reasonable doubt that a defendant's sex trafficking activities
7 were in interstate commerce or affected interstate commerce. The government need not prove
8 both.

9
10 "Interstate commerce" means trade, transactions, transportation or communication
11 between any point in a state and any place outside that state or between two points within a state
12 through a place outside the state. Acts and transactions which are economic in nature and cross
13 state lines are "in" interstate commerce. Acts and transactions which are economic in nature and
14 affect the flow of money in the stream of commerce to any degree, however minimal, "affect"
15 interstate commerce.

16
17 The government has offered proof that the sex trafficking crimes involved the use of
18 buses, phones and hotels which house out of state travelers or are a part of a national or
19 international chain. If you unanimously agree that any one or all of those facts has been proven
20 beyond a reasonable doubt, then as a matter of law the crime has affected interstate commerce.

21
22 To show that a defendant's conduct affected interstate commerce, it is not necessary
23 for the government to prove that a defendant specifically knew or intended that the recruiting,
24 enticing, harboring, transporting, providing or obtaining of a person to engage in commercial sex
25 acts would affect interstate commerce; it is only necessary that the natural consequences of such
26 conduct would be to affect interstate commerce in some way, even if minor.

If you find beyond a reasonable doubt that a defendant's recruitment, enticement, harboring, transportation, providing or obtaining of a person for the purpose of engaging in commercial sex acts was economic in nature and involved the crossing of state lines, or was economic in nature and otherwise affected the flow of money in the stream of commerce to any degree, however minimal, including by using supplies, services, or accommodations that affect interstate commerce, you may find that the third element of the offense of sex trafficking of a minor has been satisfied.

Authorities:

United States v. Justin Evans, 476 F.3d 1176 (11th Cir. 2007) (use of cell phones, use of hotel rooms and distribution of condoms all affected interstate commerce in sex trafficking venture);

United States v. Pipkins, 378 F.3d 1281, 1295 (11th Cir. 2004) (holding that evidence that "pimps furnished their prostitutes with condoms manufactured out of state..." and used instrumentalities of interstate commerce, such as pagers, telephones and mobile phones to communicate with each other while conducting business, "supports a finding that the activities of the enterprise affected interstate commerce"), *vacated on other grounds*, 544 U.S. 902, *opinion reinstated*, 412 F.3d 1251 (11th Cir. 2005);

United States v. Ballinger, 312 F.3d 1264 (11th Cir. 2003) (statutes targeting intrastate economic activity require such activity only to have minimal, aggregate effect on interstate commerce);

United States v. Holston, 343 F.3d 83, 91 (2d Cir. 2003) (acts and transactions which are economic in nature and affect the flow of money in the stream of commerce to any degree, however minimal, "affect" interstate commerce);

United States v. King, 276 F.3d 109 (2d Cir. 2002) (acts and transactions which cross state lines are "in" interstate commerce);

United States v. Toles, 297 F.3d 959, 969 (10th Cir. 2002) (requiring only potential effect on commerce);

United States v. Gray, 260 F.3d 1267, 1272-76 (11th Cir. 2001) (interstate commerce requirement of Hobbs Act requires only minimal effect on commerce and effects can be aggregated);

United States v. Peterson, 236 F.3d 848, 852 (7th Cir. 2001)(requiring only *de minimis* effect on commerce because of substantial effect when aggregated);

United States v. Gregg, 226 F.3d 253, 261-63 (3d Cir. 2000) (defining effect on interstate commerce broadly, to include minimal activity whose impact is felt in the aggregate, where activity involved is economic or commercial in nature);

1 United States v. Gilbert, 181 f.3d 152, 158-59 (1st Cir. 1999) (intrastate use of telephone provides
2 a sufficient basis for jurisdiction based on interstate commerce even absent evidence that the call
3 is routed through an interstate system);

4 United States v Weathers, 169 f.3d 336, 341 (6th Cir.) ("It is well established that telephones,
5 even when used intrastate, constitute instrumentalities of interstate commerce. Similarly, cellular
6 telephones, even in the absence of evidence that they were used to make interstate calls, have been
7 held to be instrumentalities of interstate commerce."(citations and emphasis omitted)), *cert. denied*, 528 U.S. 838, 120 S.Ct. 101, 145 L.Ed. 2d 85 (1999).

8 Eleventh Circuit Criminal Pattern Jury Instructions, No. 41.2, 18 U.S.C. § 1029(a)(2) (defining
9 interstate commerce);

10 Fifth Circuit Criminal Pattern Jury Instructions, § 2.73 (defining interstate commerce requirement
11 under Hobbs Act).

12 Seventh Circuit Model Jury Instruction No. 1957 (1999) (modified to include only the definition
13 of "in or affecting interstate commerce");

14 O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 56.05 ("Engage In, or the
15 Activities of Which Affect, Interstate Commerce" - Define) (5th Ed. 2000)

1 **SEX TRAFFICKING OF A MINOR – THIRD ELEMENT**

2

3 To satisfy the third and final element of the crime of sex trafficking of a child, the
4 government must prove beyond a reasonable doubt that a defendant's sex trafficking activities
5 were in interstate commerce or affected interstate commerce. The government need not prove
6 both.

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8 "Interstate commerce" means trade, transactions, transportation or communication
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15 The government has offered proof that the sex trafficking crimes involved the use of
16 buses, phones and hotels which house out of state travelers or are a part of a national or
17 international chain. If you unanimously agree that any one or all of those facts has been proven
18 beyond a reasonable doubt, then as a matter of law the crime has affected interstate commerce.

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20 To show that a defendant's conduct affected interstate commerce, it is not necessary
21 for the government to prove that a defendant specifically knew or intended that the recruiting,
22 enticing, harboring, transporting, providing or obtaining of a person to engage in commercial sex
23 acts would affect interstate commerce; it is only necessary that the natural consequences of such
24 conduct would be to affect interstate commerce in some way, even if minor.

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26 If you find beyond a reasonable doubt that a defendant's recruitment, enticement,
27 harboring, transportation, providing or obtaining of a person for the purpose of engaging in

1 commercial sex acts was economic in nature and involved the crossing of state lines, or was
2 economic in nature and otherwise affected the flow of money in the stream of commerce to any
3 degree, however minimal, including by using supplies, services, or accommodations that affect
4 interstate commerce, you may find that the third element of the offense of sex trafficking of a
5 minor has been satisfied.

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